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IN THE

Supreme Court of the United States

October Term, 1966

No. 395

LOVING, *et ux.*,

Appellants,

v.

COMMONWEALTH OF VIRGINIA

ON APPEAL FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

BRIEF OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS *AMICUS CURIAE*

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Statement of Interest

This brief *amicus curiae* is being filed by the National Association for the Advancement of Colored People (NAACP) with consent of the parties as provided under Rule 42 of the Rules of this Court.

The NAACP is a New York membership corporation with approximately 1500 local affiliates in the 50 states and the District of Columbia. The basic aims and purposes of the organization are to secure full and equal citizenship rights for Negroes without restrictions, burdens, limitations or barriers based upon race or color. The Negro in the United States is engaged in what often seems to be a never-ending struggle against laws, customs, practices, usages and opinion relegating him to an inferior status. Incident to this concept of his inferiority are state statutes,

such as those involved here, which deny to Negro and white persons the personal and individual right and freedom to marry each other.

Forty of the fifty states at one time or another prohibited Negroes from marrying whites. Today seventeen states prohibit various forms of interracial marriage.[1] In the main, repeal of these laws occurred in the northern states immediately before and after the Civil War, but Pennsylvania repealed its prohibition in 1780 while Indiana and Wyoming retained their proscription until 1965. The western states, with their proportionately higher population of Orientals, repealed their statutes in the post World War II period during which a new attitude was developed towards Japanese and Nisei.[2]

The statutes are neither uniform in respect to coverage of the racial groups affected, nor in defining those factors which bring individuals within their reach.[3] Thus, in Mississippi, Mongolian-white marriages are illegal and void,

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[1] Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia.

These are the same 17 states which (together with the District of Columbia) by statute required segregation in education prior to the 1954 Court ruling in Brown v. Board of Education, 347 U.S. 483.

[2] Those states which at one time had anti-miscegenation statutes, together with the dates of repeal are: Arizona, 1962; California, 1959; Colorado, 1957; Idaho, 1959; Indiana, 1965; Iowa, 1851; Kansas, 1857; Maine, 1883; Massachusetts, 1840; Michigan, 1883; Montana, 1953; Nebraska, 1963; Nevada, 1959; New Mexico, 1866; North Dakota, 1955; Ohio, 1877; Oregon, 1951; Pennsylvania, 1780; Rhode Island, 1881; South Dakota, 1957; Utah, 1963; Washington, 1867; Wyoming, 1965. (The repeals by Kansas, New Mexico and Washington occurred while they were territories.)

There is no federal policy against intermarriage. None of the islands or possessions has such statutes. Apparently Guam at one time had such prohibitions but these were abolished in 1951. (Public Law 19, First Guam Legislature.)

[3] See Appendix.

while in North Carolina they are permitted. In Arkansas, Florida and Oklahoma, Negro-white marriages are void. In Arkansas, a Negro is defined as "any person who has in his or her veins any negro blood whatever"; in Florida, one ceases to be a Negro when he has less than "one-eighth of . . . African or negro blood"[4]; and in Oklahoma, anyone not of "African descent" is miraculously transmuted into a member of the white race. Mongolians, Malays, Chinese, Japanese, Indiana, Cherokees, Half-breeds, and Mestizos are barred from marrying white persons by some of the statutes, but all bar the marriage of Negro and white persons. Anti-miscegenation statutes have been upheld by the highest court of ten of the seventeen states and enforced in the lower courts in the other seven states. In California,[6] Nevada,[7] and Arizona [8] the statutory prohibition was declared unconstitutional, and subsequently the laws were repealed.[9]

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[4] See Appendix.

[5] Green v. Alabama, 58 Ala. 190 (1877); Dodson v. State, 61 Ark. 57, 31 S. W. 977 (1895); McLaughlin v. Florida, 153 So. 2d I (1963); Scott v. Georgia, 39 Ga. 321 (1869); Miller v. Lucks, 203 Miss. 824, 36 So. 2d 140 (1948); State v. Jackson, 80 Mo. 175 (1883); State v. Kennedy, 76 N. C. 251 (1877); Eggers v. Olson, 104 Okla. 297, 231 Pac. 483 (1924); Lonas v. State, 50 Tenn. 287 (1871); Naim v. Naim, 197 Va. 80, 87 S. E. 2d 749, *remanded*, 350 U. S. 891 (1955), *aff'd*, 197 Va. 734, 90 S. E. 2d 849, *app. dismissed*, 350 U. S. 985 (1956).

[6] Perez v. Sharpe, 32 Cal. 2d 711, 198 P. 2d 17 (1948).

[7] Bridges v. Brown, Nevada District Court, Reno (December 10, 1958, not reported).

[8] Ogama v. O'Neill, Arizona Superior Court, Tucson (December 23, 1959, not reported).

[9] California 1959, Nevada 1959, Arizona 1962.

The ethnic minorities who are barred from marrying persons of their choice understandably find these statutes repugnant. As Dr. DuBois said:

> But the impudent and vicious demand that all colored folk shall write themselves down as brutes by a general assertion of their unfitness to marry other decent folk, is a nightmare.[10]

Substantial injury to more tangible interests is, moreover, often a factor to be weighed. In addition to the prohibition of marriage, criminal penalties are usually prescribed,[11] and the offspring of such marriage are declared illegitimate. Other individual rights,[12] such as the marital privilege available to a defendant in a criminal prosecution, and the right to receive property bequeathed by will, or passing under the laws of intestacy, are affected.

No authoritative statistics are available as to the number of interracial marriages in the United States. However, one may empirically observe that interracial marriage is far from unknown. While, of course, every mixed couple seen in the street and in public places is not married, some of them are, and we may assume that most of those seen with children are a family.

It is estimated that there were 25,000 Negro-white marriages 30 years ago and that there are 50,000 in the nation today. There have been some larger and some smaller estimates, but to establish an accurate figure is impossible. An average of the opinions of those who have ventured to speculate is that there are 50,000 Negro-white marriages in the United States.

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[10] DuBois, 21 *Crisis* 106 (Editorial 1920).

[11] See Appendix.

[12] See Weinberger, A Reappraisal of the Constitutionality of Miscegenation Statutes, 42 *Cornell L. Q.* 208 (1957), revised to November 1, 1963 as Appendix G in Montagu, *Man's Most Dangerous Myth: The Fallacy of Race* (4th Ed.) 402 (1964).

However, all these estimates are limited to acknowledged Negro-white marriages. None of them take into account the marriages of the substantial number of Negroes who have passed into the white community, severing all ties with Negro friends and relatives, and are known as white.[13]

It is the burden of this brief to establish that there is no rational or scientific basis upon which a statutory prohibition against marriage based on race or color alone can be justified as furthering a valid legislative purpose. The right to marry is a civil right, and it is, therefore, within the purview of the equal protection clause of the Fourteenth Amendment. The Court, in 1923, though anti-miscegenation laws were not at issue, said: "Without doubt, it [the Fourteenth Amendment] denotes not merely freedom from bodily restraint but also the right of the individual to . . . marry, establish a home and bring up children."[14]

While there is apparent equal treatment of the different races and ethnic groups in these anti miscegenation statutes, it is self-evident, even if the doctrine of "separate but equal" were still valid, that it cannot apply in the marital relationship. Nor can it be said that when two persons are denied the right to marry because of race that they may find equal opportunity within their own group. The choice of a spouse is a subjective act, the act of an individual and not that of a race or group. It follows that any legislative classification that prohibits persons from marrying each other

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[13] Dr. Robert P. Stuckert in 1958 estimated that 15,550 Negroes per year passed into the white population during 1941-1950, and that in the preceding five years the annual mean passing rate was 4,270. (Stuckert, African Ancestry of the White American Population, 58 *Ohio J. Sci.* 155 (1958). On this point see also Hart, Selective Migration as a Factor in Child Welfare in the United States, with Special Reference to Iowa, 1 *Iowa Univ. Studies* (1921)); Eckhard, How Many Negroes "Pass"? 52 *Am. J. Soc.* 498 (1947); Weinberger, "Interracial Marriage—Its Statutory Prohibition, Genetic Import, and Incidence, 2 *J. Sex Res.* 157 (1966); and Weinberger, Interracial Marriage in the U.S.A., 74 *Crisis* (March 1967).

[14] Meyer v. Nebraska, 262 U. S. 390, 399 (1923).

must, therefore, relate to individuals and be based upon personal, not group, characteristics.

Negroes cannot be considered to have obtained equal rights or to have gained full freedom as full-fledged citizens of the United States until they are free to make the individual decision as to whom they will marry without legislative interference or proscriptions based solely on the accident of their color. It is to assert this individual right to freedom and full-fledged citizenship that the NAACP is filing this brief. The basic purpose of the Fourteenth Amendment to bar all differentiation as between Negro and white persons will be frustrated as long as the instant statute and its counterparts in other states is found to be consistent with the federal Constitution and national policy.

ARGUMENT

The Genetic Import of Interracial Marriage is Conclusive Proof that its Prohibition Cannot Be a Vital Legislative Objective

Statutes prohibiting marriage on grounds other than racial ones have a place in society. Prohibition of marriages of feeble-minded persons or of persons with communicable diseases are not uncommon. Each of these is supported by demonstrable scientific knowledge that such marriages present a potential danger to society through physically or mentally ill offspring. In these statutes, the requirements of a valid legislative objective and a connection between the legislation and the ends sought have been met.

In support of the statutes prohibiting interracial marriage, the same argument is offered. Could it be demonstrated that biologically inferior children would be the result of such marriages, the need for a rational legislative policy would be satisfied. While some courts have at-

tempted to show that such prohibitions are grounded in reason, ordinarily they simply repeat outmoded and unscientific genetical conclusions. Thus a Georgia court said:

> The amalgamation of the races is not only unnatural, but it is always productive of deplorable results. Our daily observation shows us that the offspring of these unnatural connections are generally sickly and effeminate, and that they are inferior in physical development and strength, to the full blood of either race.[15]

That was in 1869, but despite Mendel and the twentieth century science of genetics, in 1955 the Virginia Supreme Court found the legislative object to be "to preserve the racial integrity of . . . [the state's] citizens . . . [and] to regulate the marriage relation so that it will not have a mongrel breed of citizens." [16]

The rationale of the state courts is abhorrent to both science and jurisprudence. They adhere to and perpetuate three erroneous assumptions: (1) that "pure races" either exist in the present or have existed in the past; (2) that crossing between different racial groups results in biologically inferior offspring; (3) that cultural level is dependent upon racial attributes. Contemporary physical anthropology and human genetics disprove all three of these assumptions.

(1) The Idea of "Pure Races"

To speak of race "mixtures" or "mongrelization" is to imply that "pure races" either still exist or have existed in the past. Contemporary biological research and theory refute both of these implications. The idea of "pure" racial groups, either past or present, has long been aban-

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[15] Scott v. Georgia, 39 Ga. 321, 323 (1869).

[16] Naim v. Naim, 197 Va. 80, 89 (1955).

doned by modern biological and social science. As Professors L. C. Dunn and Th. Dobzhansky said:

> Race mixture has been going on during the whole of recorded history. Incontrovertible evidence from studies on fossil human remains shows that even in pre-history, at the very dawn of humanity, mixing of different stocks, at least occasionally, took place.[17]

The scientific position concerning the idea of "pure races" is contained in this statement by Dr. Dobzhansky:

> The idea of a pure race is not even a legitimate abstraction; it is a subterfuge used to cloak one's ignorance of the phenomenon of racial variation.[18]

The idea of "pure races" is refuted by paleontological and genetical studies of human evolution. All mankind is a member of a single species, *homo sapiens*. All known physical variations among men, therefore, continue to take place *within* species boundaries, not without. When considering human evolution and modern "races", we are not dealing with separate species. Interbreeding among human groups manifesting differences in physical attributes produces live, fertile offspring—the mark of membership in a single species. It has been established empirically that the offspring of mixed marriages are no less physically and psychologically sound than those where both parents are of the same race.[19]

Under the sponsorship of the United Nations Educational, Scientific and Cultural Organization (UNESCO), thirteen scientists representing physical anthropology and human genetics met in June 1951 to consider the prepara-

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[17] Dunn and Dobzhansky, *Heredity, Race and Society* 115 (1952).

[18] Dobzhansky, The Race Concept in Biology, 52 *Scientific Monthly* 161 (Feb. 1941).

[19] Reuter, *The Mulatto in the United States* 117 et seq. (1918).

tion of a statement which would effect a crystallization of scientific theory and opinion on matters of race and race differences. An additional seventy renowned scientists contributed to its final form. The *Statement on the Nature of Race and Race Differences* was released by UNESCO in September of 1952.

The *Statement* at Article 7 said concerning "pure races":

> *There is no evidence for the existence of so-called "pure" races.* Skeletal remains provide the basis of our limited knowledge about earlier races. In regard to race mixture, the evidence points to the fact that human hybridization has been going on for an indefinite but considerable time. Indeed, one of the processes of race formation and race extinction or absorption is by means of hybridization between races. *As there is no reliable evidence that disadvantageous effects are produced thereby, no biological justification exists for prohibiting intermarriage between persons of different races.* (Emphasis added)

That there is still popular opinion to the contrary is shown by an Associated Press dispatch from Bastrop, La., dated November 2, 1955, which read in part:

> The Morehouse Parish School Board has voted unanimously to discontinue use of a ninth-grade general science textbook [Science for Better Living] which some persons say "contains un-American ideas on the origin of races."
>
> . . . This passage was among those cited as objectionable:
>
> "Living things which belong to recognizable kinds, which are like in most physical traits, and which breed freely with each other, are said to belong to one species. All men on this earth belong to one species—homo sapiens."
>
> Persons who object to the book said this was a plain insinuation that races "breed freely with each other" and is a dangerous Socialistic trend of thought to instill into the younger generation.

(2) The Assumption That Race Crossing Results in Biologically Inferior Offspring

Ultimately, statutes prohibiting interracial marriage are a reflection of the popular but erroneous stereotype that such marriages give rise to biologically inferior offspring. The fact that the stereotype persists even when the weight of scientific evidence is against it testifies to its ideological rather than scientific character. Even those who are most vehement about the deleterious effect of intermarriage on offspring accept the inconsistent and equally fallacious belief that Negroes of outstanding distinction always owe their intellectuality to their partial white ancestry. The research and literature assessing the biological consequences of race crossing includes no indication of either disharmonious constitution [20] or hybrid vigor.[21] Independent evaluations of this literature tend to conclude that prohibitions against interracial marriage are primarily social and psychological and not biological.

(3) The Assumption That Cultural Level is Dependent Upon Racial Attributes

Statutes prohibiting interracial marriage commonly perpetuate another assumption that is totally inconsistent with valid knowledge pertaining to the relationship between race, progress, and cultural achievement. There is no evidence to sustain the contention that cultural level is dependent upon racial or biological attributes.

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[20] Stern, *Principles of Human Genetics* (1949). See especially Chapter 26, Genetic Aspects of Race Mixture.

[21] One should not overlook that human hybridization is random and not selective as with animals and plants. Also see Krauss, Race Crossing in Hawaii, 32 *J. Heredity* 371 (1941) and Chung, A Report on a Study of 180,000 Hawaiians for 11 Years, read at a conference of the New York Academy of Sciences on Feb. 11, 1965, to be published in its *1966 Annals.*

Race, in its scientific dimension, refers only to the biogenetic and physical attributes manifest by a specified population. It does not, under any circumstances, refer to culture (learned behavior), language, nationality, or religion. One of the fundamental axioms of both physical and cultural anthropology is that culture (behavior) is independent of race. Civilizations and cultural achievement are not based on genes or physical characteristics. There are no great cultural differences between white and Negro Americans. The sub-cultural differences of economic status, education, health, and family orientation are strata differences in both groups and not differences between Negroes and whites. The difference in family structure is that the majority of low income Negro families are matriarchal as the employability of Negro women far exceeds the opportunities for employment of Negro men. But this will change when economic discrimination is ended. Proof of this is found in the present conformance to what is accepted as the American norm in the professional and other high income classes. There are no known racial or biological barriers to the acquistion or creation of any cultural tradition, a fact amply demonstrated by the creation and dissemination of cultural innovations in the United States irrespective of the racial composition of the population.

The scientific material available at present does not justify the conclusion that inherited genetic or racial differences are a factor in producing the differences between cultures. Cultural and civilizational factors are transmitted by learning and education, not by the genes. In the Army Alpha Tests of World War I Negroes from the Northern states of Ohio, Illinois, Indiana and New York scored higher than white recruits from almost all the Southern states.[22] Similarly, the World War II rate of rejection for mental

[22] Yerkes (ed.), Psychological Examining in the United States Army, 15 *Mem. Nat'l Ac. Sci.* 690 (1921).

deficiency by the Selective Service System showed that while Negro illiteracy exceeded white illiteracy in the South, white illiteracy in the Southeast exceeded Negro illiteracy in the Northwest and the far West.[23] Dr. Otto Klineberg has corroborated these results by tests made on northern and southern Negro children.[24] Economic-socio-political factors and not race determine education and health. There are no racial monopolies on cultural achievement. Historical and comparative studies of human culture show that vast changes have taken place in the economic, political, and social institutions of a given society without any, or with little, change in the racial or genetic composition of the population concerned.

If the weight of the scientific evidence formerly prevalent justified the fear of biologically inferior offspring through intermarriage, those theories have been proven false. Legislative determination cannot reverse empirical fact. Constitutional construction cannot remain unchanged when orginally predicated upon a false premise.

The statutes are self-contradictory, containing within themselves certain permissible areas of miscegenistic marriage. Apparently, "scientific" thought varies from state to state. As has been shown, some legislators see no danger in white-Mongolian marriages, while others do. None, with the exception of North Carolina and Maryland, perceive any evidence of deterioration in the offspring of intermarriage between any of the races other than white. Even as to Negroes, the degree of Negro genes thought sufficient to cause contamination varies from state to state, and in the most absurd instance, Colorado (until 1957) prohibited in one part of the state interracial marriages which were

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[23] Ginzburg and Bray, *The Uneducated*, 43 (1953).

[24] Klineberg, Mental Testing of Racial and National Groups, Corrigan (ed.), *Scientific Aspects of the Race Problem* (1941).

permitted in another part of the state.[25] Equally genetically nonsensical is North Carolina's prohibiting marriage between a Cherokee Indian of Robeson County and a Negro, with no such restriction against Cherokees of other counties nor against Indians other than Cherokees regardless of their county.[26]

It is not scientifically possible to determine whether a person is "one-eighth Negro", "one-half Malay", or is one of the many varieties of fractionated racial memberships. Such terms as "half-breeds", "octaroons", "full-bloods", and the like, are misleading when used in anything but a fictional or social sense; for example, the popular expression that a person is "one-quarter Chinese" has no necessary biological or genetic meaning—it does mean, pragmatically, only that one of a set of grandparents of that person was *socially defined* as a person of Chinese ancestry. It carries no genetically meaningful import, for example, that one-quarter of the genes of that person are "Chinese". Genes are not known to be transmitted in any such predetermined or culturally labeled quantities. Every gene derived from a non-white ancestor does not necessarily relate to the racial characteristics of the individual. Many of these inherited genes do not distinguish the individual from one of entire white ancestry being simply genes common to all races. Concerning this, Professor Don J. Hager remarked:

> Laws prohibiting marriage between "whites and persons having one-eighth or more of Negro blood"

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[25] Colo. Rev. Stat. c. 90 § 1-2 (1953).

All marriages entered into between Negroes or mulattoes of either sex, and white persons are declared to be absolutely void. Nothing in this section shall be so construed as to prevent the people living in that portion of the state acquired from Mexico from marrying according to the customs of that country.

[26] See Appendix

are compounded of legal fiction and genetic nonsense.[27]

Conclusion

When subjected to the test of the Fourteenth Amendment, the prohibition of interracial marriage must be found unconstitutional. Not only do the anti-miscegenation statutes have no scientific basis, but their philosophy is an affront to millions of our citizens.

Repugnant as is the rationale of "social practices", at least that statement has the virtue of honesty as distinguished from the biologic absurdity of "mongrel breed" and "weak and effeminate offspring". But the right of equal protection may not be denied even though a substantial segment of the population finds it distasteful. Desegregation of the schools, housing, and public facilities, and freedom to vote are being required despite the violence of the opposition.

Classification by race based upon non-existent racial traits does not serve any valid legislative purpose but merely continues a classification of Americans as superior and inferior in contradiction to the American concept of equality.

Wherefore, for the reasons hereinabove stated and for the reasons set forth in appellants' brief, the judgment of the court below should be reversed.

Respectfully submitted,

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[27] Hager, Some Observations on the Relationship Between Genetics and Social Science, 13 *Psychiatry* 371 (1950).

APPENDIX

State Legislation Against Mixed Marriages in the United States

Prohibited Marriages [a]

State and Statutory Reference	Ethnic Groups Prohibited from Marrying Whites [b and c]	Penal Offense
Alabama Const. § 102; Code tit. 14, § 360	"negro or the descendant of any negro"	Felony (Code tit. 14, § 360)
Arkansas Stat. § 55-104	"any person who has in her or his veins any negro blood whatever"	Misdemeanor (Stat. § 55-105)
Delaware Code tit. 13, § 101	"a negro or mulatto"	Misdemeanor (Code tit. 13, § 102)
Florida Const. art. XVI, § 24; Stat. § 741.11	"a negro . . . or a person of negro descent to the fourth generation, inclusive"	Felony (Stat. § 741.12)
Georgia Code § 53-106; Chap. 53.3	"It shall be unlawful for a white person to marry anyone except a white person." "White persons are only persons of the white or Caucasian race who have no ascertainable trace of either negro, African, West Indian, Mongolian, Japanese or Chinese blood in their veins."	Felony (Code § 53-9903)
Kentucky Rev. Stat § 402.020	"a negro or mulatto"	Felony (Stat. § 402-990)
Louisiana Civ. Code art. 94	"persons of color"	Felony (Crim. Code art. 740-79)

State and Statutory Reference	Ethnic Groups Prohibited from Marrying Whites [b and c]	Penal Offense
MARYLAND Code art. 27, § 398	"a negro . . . or a person of negro descent to the third generation inclusive . . . a person of the Malay race".[b]	"A white woman who shall suffer herself to be got with child by a negro or mulatto . . . shall be sentenced to the penitentiary for not less than eighteen months nor more than five years." (Code art. 27, § 513)
MISSISSIPPI Const. art. 14, § 263; Code § 459	"a negro or mulatto or person who shall have one-eighth or more of negro blood or . . . a Mongolian or person who shall have one-eighth or more of Mongolian blood."	Felony (Code § 2339)
MISSOURI Rev. Stat. §§ 451.020 and 563.240	"negroes . . . and Mongolians." Negroes are defined as persons "having one-eighth part or more negro blood."	Felony (Rev. Stat. § 563.240)
NORTH CAROLINA Const. art. XIV, § 8; Gen. Stat. §§ 14-181 and 51-3	"a negro or Indian . . . or a person of negro or Indian descent to the third generation, inclusive".[c]	Misdemeanor, but sentence may be up to ten years. (Gen. Stat. § 14-181)
OKLAHOMA Stat. tit. 43, § 12	"any person of African descent."	Felony (Stat. tit. 43, § 13)
SOUTH CAROLINA Const. art. 3, § 34; Code § 20-7	"any mulatto, half-breed, Indian, negro or mestizo."	Misdemeanor (Code § 20-7)
TENNESSEE Const. art. II, § 14, Code § 36-402	"negroes, mulattos, or persons of mixed blood descended from a negro to the third generation, inclusive."	Felony (Code § 36-403)

State and Statutory Reference	Ethnic Groups Prohibited from Marrying Whites [b] and [c]	Penal Offense
TEXAS Rev. Civ. Stat. art. 4607	"Africans or the descendants of Africans."	Felony (Penal Code art. 492)
VIRGINIA Code § 20-54	"It shall be unlawful for any white person to marry any save a white person, or a person with no other admixture of blood than white and American Indian . . . the term 'white person' shall apply to such person who has no trace whatever of any blood other than Caucasian; but persons who have one-sixteenth or less of the blood of the American Indian and have no other non-Caucasic blood shall be deemed to be white persons."	Felony (Code § 20-59)
WEST VIRGINIA Code § 4701(I)	"a negro."	White persons may be fined not more than $100 and imprisoned for not more than one year. No penalties against Negro persons. (Code § 4697)

[a] In West Virginia, though the marriage is performed in violation of the prohibitory statute, it is valid until such time as a court declares it a nullity. In all the other states listed the marriage is void.

[b] In Maryland, a marriage between "a negro and a member of the Malay race, a person of negro descent, to the third generation, inclusive, and a member of the Malay race" is also prohibited.

[c] In North Carolina a marriage between "a Cherokee Indian of Robeson County and a negro, or between a Cherokee Indian of Robeson County and a person of negro descent to the third generation" is also prohibited.